

**Statement of Patrick G. Alair
Deputy Corporation Counsel, Town of West Hartford
before the
Judiciary Committee
Connecticut General Assembly
March 29, 2012
in Opposition to Raised Bill 445
An Act Concerning Liability for the Recreational Use of Land**

Chairman Coleman, Chairman Fox and members of the Judiciary Committee, thank you for the opportunity to address you today.

First let me say that I am here as proxy for Mayor Scott Slifka and Deputy Mayor Shari Cantor, neither of whom could be present. Both of them have expressed their deep concerns about this bill to me, however, and asked that I convey those concerns to you.

It was only last July that the General Assembly passed what became Public Act 11-211: *An Act Concerning Liability for the Recreational Use of Lands*. That act finally returned municipalities to the ranks of all other property owners in Connecticut who are generally immune from liability in connection with the recreational use of their lands. When Public Act 11-211 was adopted, however, municipalities were not granted the same broad immunity which other property owners enjoy. Instead, a number of exceptions were carved out. To be clear, those exceptions were not supported by municipalities, but were considered a necessary evil to be accepted in order to get the broader benefits of the bill. Unfortunately, any time a law such as this is passed, you and we spend years debating additions to the list of exceptions. Bill 445 is just the first of countless annual attempts to swallow the general rule up with exceptions. Please just say "No."

If anything, this body should consider eliminating the existing exceptions rather than adding to the list, for the exceptions demonstrate a fundamental failure to understand the problem. Ours is not an issue of unwillingness to maintain our property. It is an issue of *inability* to be everywhere at all times. For example, the current bill would add beaches to the list of properties for which recreational immunity is unavailable. Municipal beaches, like most outdoor municipal recreational facilities, are a seasonal operation. Yet this law does not recognize that seasonality. If a person drowns at a municipal beach in January when there are no lifeguards on duty, the same exception to the recreational immunity statute applies as during the summer season when the beaches are patrolled and supervised. Yet when a public beach is closed during winter months, it is physically impossible for the municipality to prevent access to it. This is equally true of public parks, playing fields, golf courses and other open spaces. If a person is injured while cross-country skiing on a golf course in the winter months, the same level of care is mandated as applies during the height of the golf season. If a person is injured while horsing around in the spectator stands during a pickup game of softball, the municipality is held to the same standard as it is while a supervised league game is being played. The exceptions mandate that municipalities maintain their recreational facilities as much in the *off* season as in the *on* season and that is simply not feasible given the limits of staff time and budgets.

We urge you to reject this bill. We urge you to reject any efforts to expand the existing list of exceptions to municipal recreational immunity. We hope that this bill will not be reported out of this committee favorably, but if it is, we would urge you to consider an amendment restricting all of the exceptions by limiting them to those periods of time while the property in question is actively being supervised or used for an organized activity by the owner thereof.